Article 10
DISCIPLINARY ACTION

Section A. General.

The Union recognizes the authority and responsibility of the Employer to take timely, and reasonable disciplinary action against employees for just cause. Discipline will normally be progressive in nature, however, the Employer shall have the right to invoke a penalty which is appropriate to the seriousness of an individual incident or situation. For purposes of this Article, disciplinary action or investigation to determine whether disciplinary action should be taken is timely only when commenced within fifteen (15) weekdays following the date on which the Employer had reasonable basis to believe that such action or investigation should be taken. Disciplinary action includes: written reprimand; involuntary demotions; suspension without pay; forfeiture of accrued annual leave in lieu of suspension; payment of fines in lieu of suspension; and discharge. The suspension without pay of a probationary employee during or at the end of the pay period in which the initial probationary period expires, pending separation for unsatisfactory service, as well as the separation itself in such circumstances, shall not be considered disciplinary action for purposes of this Article.

A demotion will not be considered disciplinary action if it is a result of the employee failing to satisfactorily complete a required probationary period upon promotion or transfer; in conjunction with the layoff or "bump" of the employee; or the voluntary or contractually required transfer or reassignment of the employee to a position allocated at a lower level, if voluntary, or required by Civil Service merit-based rules, or this contract, if unaccompanied by disciplinary action of some other kind.

Placing an employee on "lost time" (leave without pay) for the period of an employee's unauthorized absence from work shall not be considered disciplinary action. However, if the employee has requested authorization to use accrued leave credits for such time and it is denied, the denial shall not be exempt from the scope of the grievance procedure solely on the basis that the denial is not disciplinary action.

The decision whether to offer an employee the option to forfeit accrued annual leave, or assess the suspension, shall be in the sole discretion of the Employer, and is not grievable.

Just cause for disciplinary action will include, but not be limited to:

a. Failure to carry out assigned duties and responsibilities required by the Employer;
b. Conduct unbecoming a state employee;
c. Unsatisfactory service;

d. Violation of Employer work rules, policies, regulations or directives pertaining to performance, conduct or safety.

Section B. Investigation.

The parties agree that disciplinary action must be supported by timely and accurate investigation, but investigations need not be unduly prolonged. The Employer has the right to receive prompt, truthful answers to questions put to the employee concerning any matter regulated by the Employer, related to conduct or performance, or which may have a bearing upon the employee's fitness, availability or performance of duty.

When, in the course of any disciplinary investigation, a written statement of any kind is requested from an employee, the employee shall be given the request in writing and the employee shall to the best of his/her ability provide an accurate and truthful written statement on the matter being investigated, including answers to any specific questions included in the request. The employee shall be afforded a reasonable time to respond without undue delay. A copy of the written response shall be provided to the employee who shall have the opportunity to review, amend, change or correct said statement no later than the end of the employee's next regularly scheduled work shift.

Such statement shall not be considered or used until the time period set forth herein has elapsed. However, when the employee's own conduct is the direct object of the investigation, the employee shall have the opportunity to confer with a Union representative, if readily available, before submitting such statement.

In the event the investigatory interview is recorded, videotaped, or a verbatim transcribed record of the interview is created by the Employer, the employee shall be permitted a Union representative during the interview. The Employer will provide a copy of the recording, videotape or transcript to the employee when it becomes available to the Employer. The employee may file a statement with the Employer requesting amendment or correction of his/her statements reflected in the record of the interview no later than 24 hours following receipt of the record of the interview from the Employer. Such employee statement, if timely filed, shall become part of the record of the interview to the extent it pertains to the subject matter of the interview.

[NOTE: When a critical or unusual incident report is required, the employee may be required to provide a narrative statement of events without the necessity of specific written questions. Such report shall be provided promptly and accurately to the best of the employee's ability.]

Where, as a principal in an investigation, an employee is directed to report on his/her own conduct to a patient or resident abuse committee or Fact Finding investigation by an appointed Fact Finder, making any determination which may result in disciplinary action for the employee, the employee shall have the right to

appear, to have Union representation, to suggest witnesses to be interviewed and to submit relevant documents. If a formal hearing is conducted in addition to the above, the employee shall also be entitled to call and question any witnesses. The employee and the Union, through the employee, shall receive a copy of any findings, and have an opportunity to rebut the findings and reports to his/her Appointing Authority, within five (5) weekdays, before a decision is issued concerning any disciplinary action.

When a recipient rights investigation or other preliminary investigation results in a report or finding containing information detrimental to an employee's good standing, or which would constitute a basis for disciplinary action, the right to a subsequent disciplinary conference as provided by Section D. of this Article shall still apply, at which the right to Union representation shall also apply.

The Employer shall not require or attempt to persuade an employee to take a polygraph examination, lie detector test or similar test of the employee's veracity in the course of a disciplinary investigation, nor discipline or discriminate against an employee solely on the basis that the employee refused or declined to take the examination/test.

It shall be the policy of the Employer to not take disciplinary action in the course of an investigation, except as provided in Section C. below.

Whenever, as a result of an investigation, disciplinary action is or may be appropriate, a disciplinary conference shall be held with the employee in accordance with Section D. of this Article.

Whenever an investigation does not result in disciplinary action, the finding of the investigation shall be communicated to the employee(s) under investigation. Upon request of the employee under investigation, such findings will be confirmed in writing.

Section C. Investigative or Emergency Suspensions.

1. Removal from Premises or Emergency Suspension. Nothing in this Agreement shall prohibit the Employer from taking an emergency suspension action and/or removing an employee from the work premises where, in the judgment of the Employer, such action is necessary to maintain order and discipline. As soon as practical thereafter, the investigation and disciplinary conference procedures provided herein shall be undertaken and completed.

Although placed on immediate suspension, any employee directed to leave the premises immediately may, in the course of departure, consult with a Steward on the matter if one is available without unreasonable delay.

2. Suspension for Investigation. The Employer may suspend an employee from duty, with or without pay, for investigation. A suspension for

investigation without pay may be assessed against an employee when, based upon preliminary investigation, the management official responsible for administering the employee's work location forms a reasonable belief that criminal activity may be involved.

A suspension without pay under Subsection 1. or 2. shall not exceed a total of seven (7) calendar days. In the event no disciplinary action has been taken by the end of the seven (7) calendar period, the Employer shall either return the employee to active employment status, or convert the suspension to a suspension with pay (administrative leave), except that emergency action suspensions shall be superseded by a disciplinary suspension, dismissal, or reinstatement within twenty-one (21) calendar days.

If disciplinary action or reinstatement is not taken within seven (7) calendar days the employee shall lose no pay or benefits for the period of the temporary suspension which exceeds seven (7) calendar days.

If a disciplinary action suspension without pay is fewer days than the suspension without pay for investigation, the employee shall be paid for the difference in the regularly scheduled hours of work, including any overtime to which the employee would have been entitled due to observance of a contractual holiday.

If no disciplinary action is taken, the employee shall be made whole.

3. Suspension to Maintain Program Integrity and Public Confidence. Any employee indicted by a grand jury, or against whom a criminal charge has been brought by a prosecuting attorney for conduct on or off the job, may be immediately suspended from duty without pay. Such suspension may, at the discretion of the Appointing Authority, remain in effect until the indictment or charge has been fully disposed of by trial, quashing or dismissal. Nothing herein shall prevent an employee from grieving the reasonableness of a suspension under this Subsection, where the employee contends that the charge does not arise out of the job or is not related to the job, except that suspension for a felony charge shall not be appealable. An employee who has been tried and convicted on the original or a reduced charge and whose conviction is not reversed, may be disciplined or dismissed upon proper notice without further charges being brought and such action shall be appealable through the grievance procedure. The record from any trial or hearing may be introduced by the Employer or the Union in the grievance procedure, including arbitration. Under this circumstance a disciplinary conference will be conducted only upon written request of the employee. An employee whose indictment is quashed or dismissed, or who is acquitted following trial, shall be reinstated in good standing and made whole if previously suspended in connection therewith unless disciplinary charges, if not previously brought, are filed within ten (10) weekdays of receipt of confirmation at the Departmental Personnel Office of the results of the case, and appropriate

action in accordance with this Article is taken concerning the employee. The obligation to "make whole" shall not require the Employer to compensate or credit the employee for any period of time in which the employee was hospitalized, incarcerated, or otherwise not available for and seeking work, nor shall it require the Employer to compensate the employee for any non-holiday overtime the employee might have been requested or ordered to work, but for his/her suspension.

Nothing provided herein shall prevent the Employer from disciplining an employee for just cause at any time irrespective of criminal actions taken against an employee and irrespective of their outcome.

Further, the Employer reserves the right to take disciplinary action against an employee who is charged with a criminal offense who, through a plea arrangement, is neither convicted nor acquitted of the original or reduced criminal charges, based on the Employer's investigation and determination that the employee's conduct violated one or more work rules.

Disciplinary action, if taken by the Employer, is subject to the grievance procedure. The Union retains the right to grieve the reasonableness of any work rule pertaining to criminal conduct promulgated by the Employer.

Section D. Disciplinary Conference.

Whenever the Employer determines that disciplinary action may be appropriate, a disciplinary conference shall be promptly scheduled and held with the employee pursuant to this Article. Emergency action suspensions shall be an exception.

Only upon mutual agreement between the employee and the convening management official, or in an emergency, shall a disciplinary conference be scheduled for the employee's regular day off. Subject to the same exceptions, the disciplinary conference shall be scheduled for the employee's own shift, or, in the case of a night shift employee, within one hour from the beginning or end of the employee's shift. All disciplinary conferences shall be considered as the employee's work time. Such conferences may be postponed or rescheduled by mutual agreement between the parties. Such agreement shall not be arbitrarily withheld.

The employee may waive entitlement to such disciplinary conference; in such event no conference shall be required. The employer is not required to postpone a disciplinary conference for an employee on extended sick leave or leave of absence. The employer shall advise such employee of his/her right to submit a written statement in response to the statement of charges and to have a Union Representative present at the conference to represent his/her interests.

Upon receiving the written notification of the date, time and place of the disciplinary conference the employee shall also be given and be requested to sign for a copy of the written statement of charges, which shall contain a description of the specific conduct or activity for which the disciplinary action is being considered. Such statement shall be subject to modification as a result of any new relevant information as may be brought forth at the disciplinary conference. Notification of the disciplinary conference shall also contain the range of possible disciplinary action and notification of the employee's right to union representation. Together with the statement of charges, the employee shall also be given copies of any and all documents in the Employer's possession pertaining to the charges. MCO chapter officials shall be allowed access to photocopying equipment to make a copy of the disciplinary packet to forward to MCO Central Office, as well as to make one for themselves if the packet has not already been provided by the Employer.

At the beginning of the disciplinary conference, if the employee is not accompanied by a Union Representative, and the employee indicates s/he does not want Union representation, the employee will be requested to sign a statement indicating s/he does not wish to have a Union Representative. Except as indicated by the employee's written statement that the employee does not wish to have a Union Representative present, the Union Representative shall be allowed to attend the conference as an observer to assure the integrity of applicable contract provisions affecting the Bargaining Unit as a whole.

Upon written request of the Union, the Employer shall inform the Union of the results of the disciplinary conference.

Questions by the employee or the Union Representative will be answered at the disciplinary conference to the fullest extent possible. The response of the employee to the charges, including the employee's own explanation of an incident, if not previously obtained, mitigating circumstances and the employee's response to action intended or recommended shall be received by the Employer. However, the conference shall not be for the purpose of initiating or continuing an on-going investigation.

Section E. Notice and Initiation of Disciplinary Action.

Where disciplinary action has not been determined by the end of the conference, normally within five (5) work days but in no event more than ten (10) work days thereafter, the employee shall be notified, in writing, of the results of the conference, extension of the investigation requested by either of the parties, and/or the disciplinary action to be taken or recommended.

In all cases, disciplinary action, if forthcoming, shall be initiated within forty-five (45) calendar days from the date of the disciplinary conference, excluding any approved leave or absence due to workers' compensation that makes the employee unavailable on the 45th or subsequent contiguous day(s), or any

agreed upon extension. If the penalty does not commence within this time frame there will be no disciplinary action taken against the employee nor reference to the matter in his/her personnel file.

Formal notification to the employee of disciplinary action shall be in the form of a letter or form spelling out charges and reasonable specifications. Where such notice involves loss of pay, it shall also advise the employee of the right to appeal. If presented to the employee personally, the employee shall sign for his/her copy; otherwise, the notice shall be sent to the employee by certified mail, return receipt requested, at the last address he/she provided the Employer.

Where the Employer has determined that a disciplinary suspension will be assessed, upon notification of the assessed disciplinary action, the employee may exercise either of the following options in lieu of serving the suspension time:

1. Pay a fine consisting of eighty-five percent (85%) of the employee's hourly wages for the number of hours of the assessed disciplinary action. Fines will be made as a negative pay adjustment prior to taxes if permitted by IRS Regulations. As necessary, the Employer will distribute such fines across pay periods in order to comply with Fair Labor Standards Act requirements.

2. Forfeit accrued annual or compensatory time credits at a rate of one (1) hour for each hour of the assessed disciplinary action.

Hours for either option above will be based on an eight (8) hour day for the number of days of the assessed suspension, and the employee shall have until the end of the next business day to select one of these options. Such time will not count toward the 45-day time limit for assessing disciplinary action.

The director of a department or his/her designee within the central or regional office may deny the request of an employee to exercise one of the above disciplinary options in unusual circumstances such as situations involving public notoriety or impact beyond the department.

Section F. Resignation in Lieu of Disciplinary Action.

When a decision is made to permit an employee to resign in lieu of dismissal, the employee must submit a resignation in writing. Such written resignation shall be held for twenty-four (24) hours or eight (8) business office hours, whichever is greater, after which it shall become final and effective as of the time when originally submitted, unless retracted during the twenty-four (24) hour period. This provision applies only when a resignation is accepted in lieu of dismissal and the employee has been advised he/she will be dismissed in the absence of the resignation. Acceptance of such resignation in lieu of dismissal shall be at the sole discretion of the Employer and, when accepted, the resignation and matters related thereto shall not be grievable.

Section G. Right to Representation.

Bargaining Unit members are entitled to be accompanied by the designated Union Representative for his/her work area, or by an MCO staff person, or other individual approved by MCO Central Office if representation is requested, in the circumstances described in Subsections 1 and 2 below:

1. A disciplinary conference conducted pursuant to Section D. above; and

2. A pre-disciplinary investigatory interview where—

    a. The employee has been suspended or removed from the work premises pursuant to Section C. of this Article; or

    b. The employee has been suspended (with or without pay), or reassigned from the employee's regular job assignment; or

    c. The employee has been specifically charged in writing with one or more instances of misconduct; or

    d. The employee is directed to report on his/her own conduct (as a principal in an investigation) to a patient or resident abuse committee or Fact Finder; or

    e. The interview is attended by more than one supervisor or Employer Representative; and, the employee is not represented by a Union Staff Representative; in the event that a staff representative is to attend, the Employer shall be given as much advance notice of such fact as possible.

It shall be the responsibility of the Employer, upon the employee's request, to secure the release of the Union Representative. The representative may assist the employee in presenting his/her evidence and/or argument, and point out other relevant matters. The Employer may, however, insist upon communicating directly to and with the employee regarding the matters under discussion during the conference or interview.

None of the above is intended to circumvent the normal relationship between the supervisor and employee as it pertains to discussions and counseling. The right to Union representation shall not apply to conversations between an employee and the supervisor for the purpose of giving instruction concerning work performance, providing training or retraining, or correction of work habits or techniques.

When an employee is entitled to request and be accompanied by the Union Representative at a conference under this Section, the employee and the

designated Union Representative may be allowed time, not to exceed one-half hour, immediately prior and contiguous to the scheduled conference, to permit them to confer about the subject matter of the conference. Such time shall be without loss of pay. Such one-half hour conference time shall not be required unless requested by the employee or the Union Representative, nor shall it be required if the amount of time elapsed between the time the employee received notice of the conference and the start of the conference is 48 hours or more.